

220 CMR 12.00 STANDARDS OF CONDUCT FOR DISTRIBUTION COMPANIES
AND THEIR AFFILIATED COMPANIES

Section

12.01 Purpose and Scope

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12.03 Standards of Conduct

12.01: Purpose and Scope

- (1) Purpose. 220 C.M.R. 12.00 sets forth the Standards of Conduct governing the relationship between a Distribution Company and its Affiliated Companies.
- (2) Scope. 220 C.M.R. 12.00 applies to all Distribution Companies and their Affiliated Companies.

12.02: Definitions

- (1) Antitrust Laws are federal and state statutes, including the Sherman Act, 15 U.S.C. §§ 1-7, the Clayton Act, 15 U.S.C. §§ 12-27, and the Massachusetts Antitrust Act, G.L. c. 93, §§ 1-14A, which were designed to protect trade and commerce from unlawful restraints, undue price discrimination, certain forms of concerted behavior such as price fixing, and monopolization.
- (2) Affiliated Company refers to (i) any "affiliated company," as defined in G.L. c. 164, § 85, or (ii) any unit or division within a Distribution Company or its parent, or (iii) any separate legal entity either owned by or subject to the control of a Distribution Company or its parent.
- (3) Department refers to the Department of Public Utilities.
- (4) Distribution Company refers to a natural gas local distribution company or electric company that provides distribution services under the jurisdiction of the Department.
- (5) Employee refers to an officer, director, employee or agent who has specific knowledge of, or direct access to, information not otherwise available to Non-affiliated Suppliers that could provide an Affiliated Company with an undue advantage.
- (6) Non-affiliated Supplier refers to any entity, including aggregators, engaged in marketing, brokering or selling a product or service where such product or service is also provided by an Affiliated Company.

12.03: Standards of Conduct.

- (1) A Distribution Company shall apply tariff provisions in the same manner to the same or similarly situated entities if there is discretion in the application of the provision.
- (2) A Distribution Company shall strictly enforce tariff provisions for which there is no discretion in the application of the provision.
- (3) A Distribution Company shall not, through a tariff provision or otherwise, give an Affiliated Company, or a customer of an Affiliated Company, preference over Non-affiliated Suppliers, or customers of Non-affiliated Suppliers, in matters relating to any product or service.
- (4) If a Distribution Company provides an Affiliated Company, or a customer of an Affiliated Company, any product or service other than general and administrative support services, it shall make the same products or services available to all Non-affiliated Suppliers, or customers of Non-affiliated Suppliers, on a non-discriminatory basis.
- (5) A Distribution Company shall not offer or sell electricity or natural gas commodity or capacity to an Affiliated Company without simultaneously posting the offering electronically on a source generally available to the market or otherwise making a sufficient offering to the market.
- (6) If a Distribution Company offers an Affiliated Company, or a customer of an Affiliated Company, a discount, rebate or fee waiver for any product or service, it shall make the same discount, rebate or fee waiver available to all Non-affiliated Suppliers, or customers of Non-affiliated Suppliers, on a non-discriminatory basis.
- (7) A Distribution Company shall process all similar requests for a product or service on a non-discriminatory basis.
- (8) A Distribution Company shall not condition or tie the provision of any product, service or price agreement by the Distribution Company to the provision of any product or service by an Affiliated Company.
- (9) A Distribution Company shall not release any proprietary customer information without the prior written authorization of the customer. Initial voice authorization will satisfy this requirement where the Distribution Company obtains subsequent written confirmation within thirty (30) days.
- (10) To the extent that a Distribution Company provides an Affiliated Company with information not readily available or generally known to any other marketer or supplier, the Distribution Company shall make that information available on a non-

discriminatory basis to all Non-affiliated Suppliers transacting business in its service territory. This provision does not apply to customer-specific information obtained with proper authorization, information necessary to fulfill the provisions of a contract, or information relating to the provision of general and administrative support services.

- (11) A Distribution Company shall refrain from giving any appearance of speaking on behalf of an Affiliated Company in any and all contacts or communications with customers or potential customers. The Distribution Company shall not represent that any advantage accrues to customers or others in the use of the Distribution Company's services as a result of that customer or others dealing with an Affiliated Company. The Distribution Company shall not engage in joint advertising or marketing programs of any sort with an Affiliated Company, nor shall the Distribution Company promote or market any product or service offered by an Affiliated Company.
- (12) If a customer requests information about Non-affiliated Suppliers who are engaged in the selling or marketing of natural gas, electricity, or related services, the Distribution Company shall provide a current list of all such Non-affiliated Suppliers operating on the system or registered with the Department, including any Affiliated Company, but shall not promote its affiliate. The list of Non-affiliated Suppliers shall be in random sequence, and not in alphabetical order. The list shall be updated every sixty (60) days to allow for a change in the random sequence.
- (13) Employees of a Distribution Company shall not be shared with an Affiliated Company, and shall be physically separated from those of the Affiliated Company. The Distribution Company shall fully and transparently allocate costs for any shared facilities or general and administrative support services provided to the Affiliated Company.
- (14) A Distribution Company and its Affiliated Companies shall keep separate books of accounts and records, which shall be subject to review by the Department in accordance with the provisions of G.L. c. 164, § 85.
- (15) The Department may approve an exemption from the separation requirements of 220 C.M.R. 12.03(13) upon a showing by the Distribution Company that shared employees or facilities would be in the best interests of the ratepayers and have minimal anticompetitive effect, and that the costs can be fully and accurately allocated between the Distribution Company and its Affiliated Companies. Such exemption shall be valid until such time that the Department determines that modification or removal of the exemption is necessary.
- (16) A Distribution Company shall establish and file with the Department a dispute resolution procedure to address complaints alleging violations of 220 C.M.R. 12.00. Such procedure, at a minimum, shall designate a person to conduct an

investigation of the complaint and communicate the results of the investigation to the claimant in writing within 30 days after the complaint was received, including a description of any action taken and the complainant's option to complain to the Department if not satisfied with the results of the investigation.

- (17) A Distribution Company shall maintain a log of all new, resolved and pending complaints alleging violations of 220 C.M.R. 12.00. The log shall be subject to review by the Department and shall include, at a minimum, the written statement of the complaint and the resolution of the complaint, or the reason why the complaint is still pending.
- (18) Any wanton or willful violations of 220 C.M.R. 12.00 shall result in a penalty that reflects the actual or potential injury to ratepayers and the gravity of the violation.
- (19) Nothing in 220 C.M.R. 12.00 shall be construed to confer immunity from state and federal Antitrust Laws. Sanctions for violation of 220 C.M.R. 12.00 do not affect or pre-empt antitrust liability but rather are in addition to any antitrust liability that may apply to the activity.
- (20) Notwithstanding any other provisions in 220 C.M.R. 12.00, in emergency circumstances, a Distribution Company shall take any actions necessary to ensure public safety and system reliability. A Distribution Company shall maintain a log of all such actions, subject to review by the Department.

REGULATORY AUTHORITY

220 CMR 12.00: M.G.L. c. 164, §§ 76A, 76C, 85, 85A, 94A, 94B, 94C